



Natural Resources Conservation Service
6013 Lakeside Blvd.
Indianapolis, IN 46278

January 23, 2007

INDIANA BULLETIN NO 180-7-2

SUBJECT: CPA – Wetland Conservation Compliance

Purpose: To distribute Indiana guidance contained in NB 180-7. 3; NB 180-7.4 and NB 180-7.6 on Revised Form AD 1026 and NFSAM- Versions Available On Line. These National Bulletins provide clarity and actions required for items 5, 10c, and 13 of the form AD-1026; and clarify the location of policy and procedures for Highly Erodable Land and Wetland Conservation Compliance in the National Food Security Act Manual (NFSAM).

Expiration Date: September 30, 2007.

Background:

Item 1(NB 180-7.3)

Item 5 on Form AD-1026 relates only to Farm Loan Applicants. The reference to NRCS in item 5 was intended for Conservation Compliance purposes only. Policy on processing FSA farm loan participant's determinations is found in the 3rd. edition NFSAM-511.1

Item 2 (NB180-7.3)

In 1994, the Departments of Agriculture (USDA), Interior, Army and the Environmental Protection Agency (EPA) entered into a Memorandum of Agreement (MOA) concerning the delineation of wetlands for purposes of both Section 404 of the Clean Water Act (CWA) and the Food Security Act. The 1996 and 2002 Food Security Act amendments changed the wetland provisions, producing inconsistencies between the CWA and the Food Security Act. In January 2005, USDA and the Army Corps of Engineers (COE) withdrew from the MOA and the authority for NRCS to make wetland determinations pursuant to the Clean Water Act was terminated.

The Natural Resources Conservation Service (NRCS) and the COE issued a "Memorandum to the Field" on February 25, 2005, that outlines the responsibilities of each agency. (http://www.nrcs.usda.gov/programs/compliance/pdf_files/COE_NRCS_wetland.pdf). This document provides that NRCS will only make wetland determinations on land for participants, or persons intending to become participants, in USDA programs when the proposed activity involves draining, dredging, filling, leveling, or otherwise manipulating the land, as defined in the Food Security Act, for the purpose of, or to have the effect of making possible the production of an agricultural commodity.

COE will handle all determinations solely for CWA purposes. Because this issue does not impact eligibility for Swampbuster, NRCS has no jurisdiction. Participants should be referred to the COE district office serving their area. Upon specific request from the participant, NRCS may provide existing wetlands maps for a participant's use in communications with the COE.

DIST: 0

Item 3(NB180-7.4)

When producers check “yes” in box 10C of the Form AD-1026, they are certifying that they intend to perform maintenance on a drainage system that existed prior to December 23, 1985. Box 13 instructs FSA to refer a copy of the Form AD-1026 when items 5, 9, 10A, 10B, or 10C are checked “yes.”

NRCS assistance is no longer required for normal maintenance of existing drainage systems. Therefore, a Form CPA-026 will not be issued by NRCS in response to receiving a Form AD-1026 on which only item 10C is marked “yes.” However, NRCS will maintain a record of all AD-1026s as a record of maintenance that has been performed.

County FSA offices shall provide NRCS with an “Informational Copy” of the Form AD-1026 when the only reason for the referral is a “Yes” designation in Item 10C. Since a Form CPA-026 will not be provided to FSA in these cases, the County office shall not indicate a referral to NRCS is “pending” in the producer’s subsidiary file.

Item 4(NB180-7.4)

If the producers check yes in box 10A of the Form AD 1026, they are certifying that they intend to create new drainage systems, or conduct land leveling, filling, dredging, land clearing excavation, or stump removal that has not been evaluated by NRCS. This may be for the production of a commodity crop or for non ag use.

Procedures for handling non ag use converted wetlands (CWNA) are found in 180-V-NFSAM, third Ed., Part 514.32. Determinations will only be made for non ag uses associated with agricultural production. A list of acceptable uses is found in 514.32c. A CWNA plan will need to be provided to and approved by NRCS before the CWNA determination is completed (FSAM-Part 514.32(k)).

NRCS determinations are valid ONLY as long as the land remains in agriculture use. (See NFSA, Part 514.11(b)). All requests for determinations which are intended for residential use will be forwarded to the COE. This includes ,but not limited to, single family homes being built by the landowners regardless if they are a USDA participant or not.

Please note that prior to granting CWNA, NRCS will notify the COE. The COE will advise NRCS if the CWA applies to the proposed conversion within 45 days.

Item 5

National guidance states that NRCS responsibilities are to provide a certified wetland determination and delineation on agricultural land when requested by a USDA program participant when Forms AD-1026 and/or CPA-038 is received. AD-1026 certification may be completed by a tenant, operator and or owner. Therefore, the AD-1026 will suffice and the CPA-038 will not have to be provided.

Item 6 (NB-180-7.6)

Currently, the policy and procedures used by NRCS to implement the Highly Erodible Land and Wetland Conservation Compliance provisions (HELC/WC) are housed in two different volumes. Both of these editions will be maintained until such time as the wetland conservation provisions and the remainder of the 3rd Edition (Parts 522-527) are formatted for the NRCS e-Directives Web site.

NFSAM, 3rd Edition

The 3rd Edition, NFSAM is currently being made available electronically on the NRCS Programs Web site at the following location:

<http://www.nrcs.usda.gov/programs/compliance/index.html#3rd%20Edition>.

The 3rd Edition includes the following sections:

- Part 513, Preparing to Make Wetland Determinations or Delineations.
- Part 514, Making Wetland Determinations on Agricultural Land.
- Part 515, Scope and Effect Determinations and Wetland Uses for Compliance.
- Part 516, Minimal Effect Exemption.
- Part 517, Mitigation of Lost Wetland Functions and Values.

In addition, we are including in this posting, those portions of Part 527 that have relevancy to the wetland conservation provisions. The pertinent sections include the following:

- Section 527.2, Wetland Mitigation Plan Development.
- Section 527.4, Wetland Criteria, Indicators, and Procedures.
- Section 527.6, Functional Assessment using the Hydrogeomorphic Approach.
- Section 527.6.1, Guidance for Wetland Minimal Effects Determinations.
- Section 527.12, Memorandum of Agreement among EPA, USDA, USDI, DOD, January 1994.

NFSAM, 4th Edition

The 4th Edition currently is available on the NRCS e-Directives Web site. It can also be accessed at the following location: <http://directives.sc.egov.usda.gov>. Select “Manuals” from the menu on the left, and then scroll down to: “National Food Security Act Manual, Fourth Edition, Part 510.”

This edition includes the following parts:

- Part 510, General Information.
- Part 511, Highly Erodible Land Determinations.
- Part 512, Conservation Systems and Plans.
- Part 518, Compliance Reviews.
- Part 519, Quality Assurance.
- Part 520, Technical Assistance, Exemptions, Variances, and Investigations.

If you have any questions concerning this guidance, please contact Harold Thompson, Assistant State Conservationist – Programs at (317) 290-3200, ext. 320; or Shannon Zezula, State Resource Conservationist, ext. 388

/s/

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State Conservationist